

## FEDERAL POWER ACT

**Editor's Note.** The Act of August 26, 1935, ch. 687, 49 Stat. 803, entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes," is the Public Utility Act of 1935. Title I carries the short title of the Public Utility Holding Company Act of 1935. Title II deals with amendments to the Federal Water Power Act of June 10, 1920. Sections 201 through 211 of Title II, 49 Stat. 838-47, make a number of revisions in the 1920 Act; section 212, 49 Stat. 847, provides that the Federal Water Power Act, as amended, shall constitute Part I of an expanded act; and section 213, 49 Stat. 847-63, adds Part II, relating to the regulation of electrical utility companies engaged in interstate commerce, and Part III, dealing with licenses and administrative matters. This expanded act is given the short title of the Federal Power Act, 49 Stat. 863. Extracts from Parts II and III appear below, while Part I, the revised Federal Water Power Act, appears in chronological order herein under the Act of June 10, 1920.

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### PART II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

#### DECLARATION OF POLICY, APPLICATION OF PART, DEFINITIONS

**Sec. 201.** [Applies to transmission, and to sale at wholesale, of electric energy in interstate commerce.]—(a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

(b) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

(d) The term "sale of electric energy at wholesale" when used in this Part means a sale of electric energy to any person for resale.

(e) The term "public utility" when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part.

(f) No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto. (49 Stat. 847; 16 U.S.C. § 824)

#### EXPLANATORY NOTE

Editor's Note, Annotations. Only selected annotations of opinions are included.

#### NOTES OF OPINIONS

##### 1. F.P.C. jurisdiction

The inclusion of energy from Hoover and Davis dams in the energy sold to the City of Colton, California, by the Southern California Edison Company renders such sale a "sale of electric energy at wholesale in interstate commerce" within the meaning of section 201(b) of the Federal Power Act, and therefore such sale is subject to the jurisdiction of the Federal Power Commission. The distinction in the act between Federal and State regulatory jurisdiction turns on whether the sale is at wholesale to local distributing companies or is at local retail rates to ultimate consumers. *F.P.C. v. Southern California Edison Co.*, 376 U.S. 205 (1964).

The authority conferred on the Secretary of the Interior by section 6 of the Boulder Canyon Project Act to prescribe and enforce rules and regulations conforming with the requirements of the Federal water power act respecting "control of rates and service" of companies purchasing Hoover power, was

superseded and repealed by Part II of the Federal Power Act of 1935 with respect to resales of electric energy from Hoover dam at wholesale in interstate commerce, and therefore the Federal Power Commission has jurisdiction over the rates at which Southern California Edison Company sells power, including energy from Hoover and Davis dams, to the City of Colton, California. *F.P.C. v. Southern California Edison Co.*, 376 U.S. 205, 216-20 (1964).

The rates charged by Utah Power and Light Company for wheeling energy, some of which originates out of state, for the Bureau of Reclamation to preference customers are subject to the jurisdiction of the Federal Power Commission under section 201 of the Federal Power Act notwithstanding the fact that the company is performing this paid transportation service for an agency of the Federal Government whose own operations are not subject to the jurisdiction of the Commission. 33 F.P.C. 314 (1965).

#### INTERCONNECTION AND COORDINATION OF FACILITIES; EMERGENCIES; TRANSMISSION TO FOREIGN COUNTRIES

Sec. 202. (a) [Regions—Voluntary interconnections.]—For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the

public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

(b) [Mandatory interconnections.]—Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

(c) [Emergency powers.]—During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

(d) [Emergency interconnections.]—During the continuance of any emergency requiring immediate action, any person engaged in the transmission or sale of electric energy and not otherwise subject to the jurisdiction of the Commission may make such temporary connections with any public utility subject to the jurisdiction of the Commission or may construct such temporary facilities for the

transmission of electric energy in interstate commerce as may be necessary or appropriate to meet such emergency, and shall not become subject to the jurisdiction of the Commission by reason of such temporary connection or temporary construction: *Provided*, That such temporary connection shall be discontinued or such temporary construction removed or otherwise disposed of upon the termination of such emergency: *Provided further*, That upon approval of the Commission permanent connections for emergency use only may be made hereunder.

(e) [Transmission to foreign country.]—After six months from the date on which this Part takes effect, no person shall transmit any electric energy from the United States to a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application unless, after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may by its order grant such application in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate.

(f) [Limit on jurisdiction.]—The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part. The State within which any such facilities are located may regulate any such transaction insofar as such State regulation does not conflict with the exercise of the Commission's powers under or relating to subsection 202(e). (49 Stat. 848; Act of August 7, 1953, 67 Stat. 461; 16 U.S.C. § 824a)

## EXPLANATORY NOTE

1953 Amendment. The Act of August 7, 1953, added subsection (f). For legislative history of the 1953 Act see S. 1442, Public Law 210 in the 83rd Congress; S. Rept. No. 513; H.R. Rept. No. 978.

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## PART III—LICENSEES AND PUBLIC UTILITIES; PROCEDURAL AND ADMINISTRATIVE PROVISIONS

## ACCOUNTS, RECORDS, AND MEMORANDA

Sec. 301. (a) [Records to be kept—Commission may prescribe system of accounts.]—Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of

the administration of this Act, including accounts, records, and memoranda of the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however,* That nothing in this Act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

(b) [Access to property and accounts—Commission shall not divulge information.]—The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of licensees and public utilities, and it shall be the duty of such licensees and public utilities to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

(c) [Records subject to examination.]—The books, accounts, memoranda, and records of any person who controls, directly or indirectly, a licensee or public utility subject to the jurisdiction of the Commission, and of any other company controlled by such person, insofar as they relate to transactions with or the business of such licensee or public utility, shall be subject to examination on the order of the Commission. (49 Stat. 854; 16 U.S.C. § 825)

#### EXPLANATORY NOTE

1953 Modification. The Act of August 15, 1953, 67 Stat. 587, as amended by the Act of July 31, 1959, 73 Stat. 271, provides that sections 301 and 302 shall not apply to any project owned by a State or a municipality. The text of the 1953 Act appears herein as a note following section 14 of this Act.

#### RATES OF DEPRECIATION

Sec. 302. (a) [Commission may fix rates of depreciation.]—The Commission may, after hearing, require licensees and public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may, from time to time, ascertain and determine, and by order fix, the proper and adequate

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rates of depreciation of the several classes of property of each licensee and public utility. Each licensee and public utility shall conform its depreciation accounts to the rates so ascertained, determined, and fixed. The licensees and public utilities subject to the jurisdiction of the Commission shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such licensee or public utility shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State Commission to determine in the exercise of its jurisdiction, with respect to any public utility, the percentage rate of depreciation to be allowed, as to any class of property of such public utility, or the composite depreciation rate, for the purpose of determining rates or charges.

(b) [State Commission to be notified.]—The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation rates, shall notify each State commission having jurisdiction with respect to any public utility involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations. (49 Stat. 855; 16 U.S.C. § 825a)

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## REQUIREMENTS APPLICABLE TO AGENCIES OF THE UNITED STATES

Sec. 303. [Requirements applicable to agencies of the United States.]—All agencies of the United States engaged in the generation and sale of electric energy for ultimate distribution to the public shall be subject, as to all facilities used for such generation and sale, and as to the electric energy sold by such agency, to the provisions of sections 301 and 302 hereof, so far as may be practicable, and shall comply with the provisions of such sections and with the rules and regulations of the Commission thereunder to the same extent as may be required in the case of a public utility. (49 Stat. 855; 16 U.S.C. § 825b)

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## INVESTIGATIONS RELATING TO ELECTRIC ENERGY

Sec. 311. [Investigations relative to electric energy authorized—Commission to secure and keep current information and report investigations to Congress.]—In order to secure information necessary or appropriate as a basis for recommending legislation, the Commission is authorized and directed to conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions,

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whether or not otherwise subject to the jurisdiction of the Commission, including the generation, transmission, distribution, and sale of electric energy by any agency, authority, or instrumentality of the United States, or of any State or municipality or other political subdivision of a State. It shall, so far as practicable, secure and keep current information regarding the ownership, operation, management, and control of all facilities for such generation, transmission, distribution, and sale; the capacity and output thereof and the relationship between the two; the cost of generation, transmission, and distribution; the rates, charges, and contracts in respect of the sale of electric energy and its service to residential, rural, commercial, and industrial consumers and other purchasers by private and public agencies; and the relation of any or all such facts to the development of navigation, industry, commerce, and the national defense. The Commission shall report to Congress the results of investigations made under authority of this section. (49 Stat. 859; 16 U.S.C. § 825j)

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SHORT TITLE

Sec. 320. This Act may be cited as the "Federal Power Act." (49 Stat. 863; 16 U.S.C. § 791a)

EXPLANATORY NOTE

Legislative History. S. 2796, Public Law 1318 and H.R. Rept. No. 1318, pt. 2 H.R. 333 in the 74th Congress. S. Rept. No. 621 Rept. No. 1903 (conference report). and S. Rept. No. 621, pt. 2. H.R. Rept. No.

